G. R. S. App. F. IX-4]

Previous References.

194 2.
(cls)

File No. 21-42
Serial Nos. 1-2

Later References.

GENERAL AND REVENUE SECRETARIAT

Serial Nos. 2

Part B for [illegible]

SUBJECT.

Amendment to Rule 43 of Order XXI of the Code of Civil Procedure, 1911.

No. P. 866 dated 1.8.42

To.

The Registrar,
High Court of
Mysore, Bangalore

Accords sanction to the
Taluks

GENERAL AND REVENUE SECRETARIAT.

(Cts)

NOTES. Cls File No. 21-42

FILE HEADING.

Proposed Amendment of Rule 43 of order XXI of the Code of Civil Procedure, 1911.

FROM The Registrar, High Court

Roc. No. 274/39540 Dated 16th July 1942 Received 11.7.42.

Diary No.	Enclos.	Spare copies	Serial No. 1

BRIEF ABSTRACT OF LETTER.

Requests that sanction may be accorded to the proposed amendment of Rule 43 of Order XXI of the Code of Civil Procedure 1911.

NOTES AND ORDERS.

Submitted with a draft G.O. sanctioning.
(vide typed statement "K" re: the existing rule and the proposed amendment.)

SM 14/7

M 16/7

Recommended to the Hon'ble Minister for Law for approval.

Law Secretary 29/7

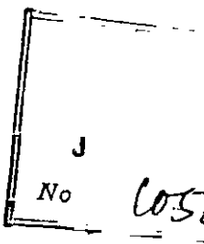
SECTT. BOOK 115-1 GOVT

NOTES—First Sheet.

WD 01683—GPB—5,000—3-5-29

Amendment of rule 43 of order XXI
of the Code of Civil Procedure, 1911

Sanction may be given for
amending the Rule



Submitted for Law

29-7-42

3
3x17

30/7

31-7-42

31/7

G.O. No. P. 866 dated 1-8-42
to the Regr. High Ct. of Mysore.

Sl-2

Accords sanction to the
amendment of Rule 43 of order XXI
of the Code of Civil Procedure
referred to in Sl. 1.

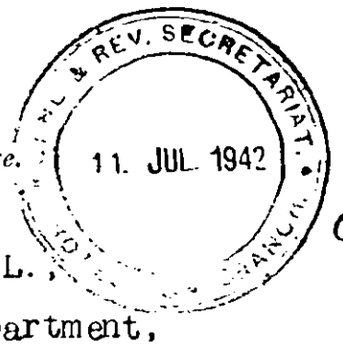
25 3/42

R. O. C. No. 274/39-40
D. Dis.
Encl. one

HIGH COURT OF MYSORE,
Public Office Buildings, Cubbon Park,
Bangalore, 10th July *1942.*

FROM

N. Samaiengar, Esq., B.A., LL.B.,
Registrar, High Court of Mysore.



C. Narayanaswamy Naidu, Esq., B.A., B.L.,
Secretary to Government, Law Department,
Bangalore.

SIR,

I am directed to state that Rule 43 of Order XXI of the Code of Civil Procedure, 1911, as it stands, provides that property attached in execution of a decree of a Civil Court other than agricultural produce shall be kept in the custody of the attaching officer or one of his subordinates. In practice it was found necessary many years ago to make provision for other custody than that of the attaching officer, such as by leaving the property attached in some instances in the village or place where it was seized, and the Chief Court-- as it then was-- with the sanction of Government made Rules of Practice, on the subject, viz:- the rules embodied in paragraphs 268, 269 and 270 of the Civil Rules of Practice, Volume I. But those rules are in some respects in conflict with and legally overridden by Rule 43 of Order XXI of the Code of Civil Procedure, as it now stands. The Judges of the High Court are of opinion that it is desirable to amend that rule, as has been done in several parts of British India, so as to authorize attached property being left as a matter of procedure, when necessary, in the village or place where it is seized. When that has been done, the Judges propose to make under section 130 of the Code of Civil Procedure some new rules regarding the care of attached property brought to Court, as the present rules, apart from any question of their legality, are not entirely satisfactory.

The Judges, after considering the recommendation of the Rule Committee, propose to substitute the Rule set out in the appendix to this letter for the existing Rule 43 of Order XXI of the Code

of Civil Procedure.

The proposed amendment was published in the Mysore Gazette of 4 June 1942, and no objection nor suggestion has been received.

I am to request that the Government may be pleased to accord sanction to the proposed amendment under section 126 of the Code of Civil Procedure.

I have the honour to be,

Sir,

Your most obedient servant,

Registrar.

NVK.

Proposed Rule 43 of Order XXI of the Code of Civil Procedure, 1911.

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43. Where the property to be attached is movable property, other than agricultural produce, in the possession of the judgment-debtor, the attachment shall be made by actual seizure and the attaching officer shall bring the property to Court:

Attachment of movable property, other than agricultural produce, in possession of judgment-debtor.

(1) Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once, and

(2) Provided further that, when the seized property consists of live-stock or articles which cannot conveniently be removed, and the attaching officer does not act under the first proviso to this rule, he may leave it in the village or place where it has been attached in the charge of a village officer or such other respectable person as will undertake to keep the property subject to the orders of the Court, if such person enters into a bond with one or more sufficient sureties for its production when called for.

N. Samaiengar

Registrar.

BS

NVK.

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G. R. S. App. F VI—G 2]

SUBJECT .....

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Diary No. of letter replied to .....

Section. Cl

File No. 2/-42

Serial No. 2

General and Revenue Secretariat

( )

the *193* .

Proceedings of the Government of His Highness the Maharaja of Mysore

Date of issue 1-8-42 193

Signed by ..... Sher. K.P.P

May this be—

(i) printed ? Order thereon. No. P866 dt 1-8-42 The Registrar to CPC 1911.

(ii) treated as a standing order ?

(iii) published in the Gazette, English Part ?

(iv) translated ?

(v) placed at the disposal of the press ?

(vi) published in the Gazette, Kannada Part ?

Read—Letter No R.O.C. 274/39-40 Dated 6th July 1942 from the Registrar High Court of Mysore, ~~stating that~~ in the matter of amending Rule 43 of Order XXI of the Code of Civil Procedure, 1911, ~~as it stands~~, and referring that Rule 43 of Order XXI of the provides that property attached in execution of a decree of a Civil Court other than Agricultural produce Order thereon.—No. shall be kept in the custody of the attaching officer or one of his sub-ordinates. ~~But that~~ But in practice it was found necessary to make provision for other custody than that of the attaching officer, such as by leaving the property attached in some instances, in the village

or place where it was seized and
the Chief Court as it was then, - made
Rules of Practice on the subject, viz
The Rules embodied in paragraphs
268, 269 and 270 of the Civil Rules
of Practice - Vol I with the sanction
of Govt. ~~Such~~ These Rules, however, are in
some respects in Conflict with and
legally overridden by Rule 43 of
Order XXI of the Code of Civil
Procedure, as it now stands. The Judges
of the High Court are therefore of opinion
that it is desirable to amend that Rule
as has been done in several parts of
British India, so as to authorize attached
property being left as a matter of
procedure, when necessary, in the village or
place where it is seized and Requesting, in the circumstances,
sanction for substituting the Rule as set out in the appendix
to this order for the existing Rule 43 of order XXI of the
Code of Civil Procedure. ~~and intimating~~ ~~He not~~ It is reported
that the proposed amendment recommended by the Rule Committee
was duly published and no objection or suggestion was received.

~~Yours~~

Report

We report that

List of Enclosure

Copied by

Examined by

WD 0564—GPB—22,500—9-1-39

G. R. S. App. F. G. 3.

GENERAL AND REVENUE SECRETARIAT.

(*Continuation sheet draft form.*)

Govt are pleased to accord sanction to the amendment which is appended to this order.

Secy
29/4/42

Secretary to Govt.
Law Deptt.

SM
14/7

To,

The Registrar,

High Court of Mysore.

WD 0282—GPB—22,500—14-3-38

Existing Rule 43 of Order XXI of the Code of Civil Procedure, 1911.

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43. Where the property to be attached is movable property, other than agricultural produce, in the possession of the Judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

Proposed Amendment of rule 43 of Order XXI of the Code of Civil Procedure, 1911.

Where the property to be attached is movable property, other than agri-

Attachment of movable property, other than agricultural produce, in possession of judgment-debtor.

cultural produce, in the possession of the judgment-debtor, the attachment shall be made by actual seizure and the attaching officer shall bring the property to Court:

(1) Provided that when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once; and

(2) Provided further that when the seized property consists of live-stock or articles which cannot conveniently be removed, and the attaching officer does not act under the first proviso to this rule, he may leave it in the village or place where it has been attached in the charge of a village officer or such other respectable person as will undertake to keep the property subject to the orders of the Court, if such person enters into a bond with one or more sufficient sureties for its production when called for.

JM 14/7

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS
THE MAHARAJA OF MYSORE.

Read:—

Letter No.R.O.C.274/39-40 dated 10th July 1942 from the Registrar, High Court of Mysore, in the matter of amending Rule 43 of Order XXI of the Code of Civil Procedure, 1911.

ORDER No. P. 866 Ch 21-42-2

Dated, Bangalore, the, 18th Aug 1942.

The Registrar, High Court of Mysore reports that Rule 43 of Order XXI of the Code of Civil Procedure provide that property attached in execution of a decree of a Civil Court other than Agricultural produce shall be kept in the custody of the attaching officer or one of his sub-ordinates. But in practice it was found necessary to make provision for other custody than that of the attaching officer, such as by leaving the property attached in some instances, in the village or place where it was seized and the Chief Court as it was then, - made Rules of Practice on the subject, viz. the rules embodied in paragraphs 268, 269 and 270 of the Civil Rules of Practice - Volume I with the sanction of Government. These rules, however are in some respects in conflict with and legally overridden by Rule 43 of Order XXI of the Code of Civil Procedure, as it now stands. He reports that the Judges of the High Court are therefore of opinion that it is desirable to amend that rule as has been done in several parts of British India, so as to authorize attached property being left as a matter of procedure, when necessary, in the village or place where it is seized and request, in the circumstances, sanction for substituting the Rules as set out in the appendix to this order for the existing Rule 43 of order XXI of the Code of Civil Procedure. It is reported

contd)-

that the proposed amendment recommended by the Rule Committee was duly published and no objection or suggestion was received. Government are pleased to accord sanction to the amendment, which is appended to this order.

Yours Secretary to Government,
Law Department.

To

The Registrar, High Court of Mysore.

KMS.

Amendment to Rule 43 of Order XXI of the Code of Civil Procedure, 1911.

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43. Where the property to be attached is movable property, other than agricultural produce, in the possession of the judgment-debtor, the attachment shall be made by actual seizure and the attaching officer shall bring the property to Court.

Attachment of movable property, other than agricultural produce, in possession of Judgment-debtor

(1) Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once, and

(2) Provided further that, when the seized property consists of live-stock or articles which cannot conveniently be removed, and the attaching officer does not act under the first proviso to this rule, he may leave it in the village or place where it has been attached in the charge of a village officer or such other respectable person as will undertake to keep the property subject to the orders of the Court, if such person enters into a bond with one or more sufficient sureties for its production when called for.

For Secretary to Government,
Law Department.

KNNS.

Extra

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

Read:—

Letter No.R.O.C.274/39-40 dated 10th July 1942 from the Registrar, High Court of Mysore, in the matter of amending Rule 43 of Order XXI of the Code of Civil Procedure, 1911.

ORDER, Thereon NO.P. 866 Ch 21-42-2

Dated, Bangalore, the, 18th August 1942.

The Registrar, High Court of Mysore reports that Rule 43 of Order XXI of the Code of Civil Procedure provide that property attached in execution of a decree of a Civil Court other than Agricultural produce shall be kept in the custody of the attaching officer or one of his sub-ordinates. But in practice it was found necessary to make provision for other custody than that of the attaching officer, such as by leaving the property attached in some instances, in the village or place where it was seized and the Chief Court as it was then, - made Rules of Practice on the subject, viz. the rules embodied in paragraphs 268, 269 and 270 of the Civil Rules of Practice - Volume I with the sanction of Government. These rules, however are in some respects in conflict with and legally overridden by Rule 43 of Order XXI of the Code of Civil Procedure, as it now stands. He reports that the Judges of the High Court are therefore of opinion that it is desirable to amend that rule as has been done in several parts of British India, so as to authorize attached property being left as a matter of procedure, when necessary, in the village or place where it is seized and request, in the circumstances, sanction for substituting the Rules as set out in the appendix to this order for the existing Rule 43 of order XXI of the Code of Civil Procedure. It is reported

contd)-

that the proposed amendment recommended by the Rule Committee was duly published and no objection or suggestion was received. Government are pleased to accord sanction to the amendment, which is appended to this order.

for Secretary to Government,
Law Department.

To

The Registrar, High Court of Mysore.

Extra

Amendment to Rule 43 of Order XXI of the Code of Civil Procedure, 1911.

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For Secretary to Government,
Law Department.

KNNS.